

§ 534.408

(b) To determine the hourly rate of pay for members of the SES, divide the annual SES rate of basic pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent. To derive the biweekly rate, multiply the hourly rate by 80.

(c) Senior executives are subject to the applicable aggregate limitation on pay in 5 CFR part 530, subpart B.

[69 FR 70367, Dec. 6, 2004]

§ 534.408 Restrictions on premium pay and compensatory time.

(a) Under 5 U.S.C. 5541(2)(xvi) and 5 CFR 550.101(b)(18), members of the Senior Executive Service (SES) are excluded from premium pay, including overtime pay.

(b) Since SES members are not eligible for overtime pay, they also are not eligible for compensatory time in lieu of overtime pay for work performed as an SES member. SES members are eligible, however, for compensatory time off for religious purposes under 5 U.S.C. 5550a and 5 CFR part 550, subpart J.

[60 FR 6390, Feb. 2, 1995, Redesignated and amended at 69 FR 70362, 70367, Dec. 6, 2004]

Subpart E—Pay for Senior-Level and Scientific and Professional Positions

SOURCE: 56 FR 18662, Apr. 23, 1991, unless otherwise noted.

§ 534.501 Coverage.

(a) This subpart implements 5 U.S.C. 5376 and applies to—

(1) Senior-level (SL) positions classified above GS-15 pursuant to 5 U.S.C. 5108; and

(2) Scientific or professional (ST) positions established under 5 U.S.C. 3104.

(b) This subpart does not apply to—

(1) Senior Executive Service positions established under 5 U.S.C. 3132, unless the incumbent of the position declined to convert to the SES and under § 317.303 of this chapter remained at grade GS-16, 17, or 18 (now the SL pay system) or under the ST pay system;

(2) Positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, Defense Intelligence Executive

5 CFR Ch. I (1–12 Edition)

Service, or Senior Cryptologic Executive Service; or

(3) Positions where pay is fixed by administrative action and is limited to level IV of the Executive Schedule under 5 U.S.C. 5373.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992]

§ 534.502 Pay range.

A pay rate fixed under this subpart shall be—

(a) Not less than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; and

(b) Not greater than the rate of basic pay payable for level IV of the Executive Schedule.

§ 534.503 Pay setting.

(a) Each agency with positions subject to this subpart shall establish written procedures for setting the pay of incumbents of the positions in accordance with the provisions of law and OPM regulations. The head of each agency, or his or her designee, shall set the rate of pay of individuals under this subpart in accordance with the agency's written procedures.

(b) The agency's written procedures shall include—

(1) A description of the structure of the pay system;

(2) The criteria that will be used to assign rates of pay to individual employees;

(3) The 12-month waiting period on pay adjustments, as provided in paragraph (c) of this section;

(4) The designation of the official or officials who will have authority to set pay; and

(5) The management controls that will be applied to assure compliance with the procedures and a reasonable distribution of pay within the pay range.

(c) Pay of an individual may not be adjusted more than once in any 12-month period.

(1) A pay adjustment includes the assignment of a pay rate upon initial appointment.

(2) An annual adjustment in pay under § 534.504 of this subpart shall not be considered a pay adjustment under this paragraph if it does not exceed the greater of the annual General Schedule

Office of Personnel Management

§ 534.602

adjustment under 5 U.S.C. 5303 or the Executive Schedule adjustment under 5 U.S.C. 5318 effective the same date.

(3) Pay of an SL or ST employee transferring from another agency, or a military department, may be set at any rate. If the pay does not exceed the employee's former rate, the pay action does not start a new 12-month period.

(d) Any reduction in the basic pay of an individual is subject to the provisions of subparts C and D of part 752 of this chapter.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992; 66 FR 66711, Dec. 27, 2001]

§ 534.504 Annual adjustment in pay.

Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of pay under the General Schedule, each rate of pay established under this subchapter shall be adjusted by such amount as the head of the agency considers appropriate, in accordance with the provisions of § 534.503 of this part.

§ 534.505 Pay related matters.

(a) *Aggregate compensation.* Limits on aggregate compensation, including basic pay, are in 5 U.S.C. 5307 and part 530, subpart B, of this chapter.

(b) *Performance awards.* Performance awards may be paid under 5 U.S.C. chapter 45 and § 451.104(a)(3) of this chapter.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992; 63 FR 53276, Oct. 5, 1998]

§ 534.506 Conversion provisions.

(a) This section covers initial conversion to the pay system under 5 U.S.C. 5376 as of the effective date of these regulations.

(b) The rate of basic pay for any individual converting to a pay system under 5 U.S.C. 5376 shall be at least equal to the rate payable to that individual immediately before such conversion, including any interim geographic adjustment authorized by Schedule 9 of Executive Order 12736 of December 12, 1990.

(c) If there is an increase in an individual's rate of basic pay upon conversion, other than to the minimum rate under 5 U.S.C. 5376, the increase must be approved by the head of the agency or his or her designee.

Subpart F—Pay for Administrative Appeals Judge Positions

SOURCE: 66 FR 63908, Dec. 11, 2001, unless otherwise noted.

§ 534.601 Coverage.

(a) This subpart implements 5 U.S.C. 5372b and applies to administrative appeals judge positions, the duties of which are not classifiable above GS-15 under 5 U.S.C. 5108 and which primarily involve reviewing decisions of administrative law judges appointed under 5 U.S.C. 3105 and rendering final administrative decisions.

(b) This subpart does not apply to—

(1) Senior-level positions classified above GS-15 pursuant to 5 U.S.C. 5108;

(2) Scientific or professional positions established under 5 U.S.C. 3104;

(3) Senior Executive Service positions established under 5 U.S.C. 3132 or 3151;

(4) Positions for which pay is fixed by administrative action and limited to level IV of the Executive Schedule under 5 U.S.C. 5373;

(5) Administrative law judge positions appointed under 5 U.S.C. 3105; or

(6) Positions in agencies that are excluded from chapter 51 of title 5, United States Code, by section 5102(a) or 5102(c) or other provision of law.

§ 534.602 Definitions.

Administrative appeals judge position means a position not classified above GS-15 under 5 U.S.C. 5108 and for which the duties primarily involve reviewing decisions of administrative law judges appointed under 5 U.S.C. 3105 and rendering final administrative decisions.

Administrative law judge means an individual in an *administrative law judge* position as that term is defined in section 930.202 of this chapter.

Agency means an *Executive agency*, as defined in 5 U.S.C. 105, excluding the U.S. General Accounting Office.

Head of an agency means the head of an Executive agency or an official who